



Reprinted
February 13, 2009

HOUSE BILL No. 1076

DIGEST OF HB 1076 (Updated February 12, 2009 2:18 pm - DI 71)

Citations Affected: IC 20-29.

Synopsis: Public school collective bargaining agreements. Provides that, after June 30, 2009, the provisions of a collective bargaining agreement entered into after the expiration of an agreement apply retroactively to the date of the expiration, unless the parties to the agreement agree otherwise. Adds mediation-arbitration and final offer as an alternative method of resolving an impasse in collective bargaining for certificated education personnel.

Effective: July 1, 2009.

Cheatham

January 7, 2009, read first time and referred to Committee on Education.
February 2, 2009, amended, reported — Do Pass.
February 12, 2009, read second time, amended, ordered engrossed.

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HB 1076—LS 6681/DI 71+



Reprinted
February 13, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1076

A BILL FOR AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 20-29-3-12, AS ADDED BY P.L.1-2005,
2 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 12. The board shall organize the board's staff to
4 provide for the functions of:
5 (1) unit determination;
6 (2) unfair labor practice processing;
7 (3) conciliation and mediation;
8 (4) factfinding;
9 **(5) mediation and final offer selection; and**
10 ~~(5)~~ **(6) research.**
11 SECTION 2. IC 20-29-3-13, AS ADDED BY P.L.1-2005,
12 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2009]: Sec. 13. In connection with conciliation and mediation,
14 ~~or~~ factfinding, **or mediation and final offer selection**, the board may:
15 (1) use full-time employees; or
16 (2) appoint employees for specific cases from a panel the board
17 establishes.

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SECTION 3. IC 20-29-6-6, AS ADDED BY P.L.1-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. The obligation to bargain collectively does not include the final approval of a contract concerning any items. Agreements reached through collective bargaining are binding as a contract only if ratified by the governing body of the school corporation and the exclusive representative. The obligation to bargain collectively does not require the school employer or the exclusive representative to agree to a proposal of the other or to make a concession to the other. **The obligation to bargain collectively is subject to the final offer process if mediation and final offer selection is elected under section 12(b) of this chapter.**

SECTION 4. IC 20-29-6-12, AS ADDED BY P.L.1-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. (a) Collective bargaining between a school ~~corporation employer~~ and the exclusive representative shall begin:

(1) not later than one hundred eighty (180) days before the ~~submission date of a budget by a school employer; first day of the first term or semester of a school year; and~~

(2) when the exclusive representative notifies the school employer and the board of the start of bargaining.

(b) The school employer and the exclusive representative shall use the collective bargaining procedures set forth in this chapter unless either party declares an impasse and elects to use the mediation and final offer selection procedure set forth in IC 20-29-8-15 through IC 20-29-8-30.

(c) The exclusive representative or the school employer may opt out of participating in the mediation and final offer selection procedure at the start of bargaining.

SECTION 5. IC 20-29-6-14, AS ADDED BY P.L.1-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. If an agreement has not been reached on the items to be bargained collectively seventy-five (75) days before the ~~submission date of a budget by a school employer; first day of the first term or semester of a school year,~~ the board shall initiate mediation.

SECTION 6. IC 20-29-6-15, AS ADDED BY P.L.1-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. If an agreement has not been reached on the items to be bargained collectively forty-five (45) days before the ~~submission date of a budget by a school employer; first day of the first term or semester of a school year,~~ the board shall initiate factfinding.

SECTION 7. IC 20-29-6-16, AS ADDED BY P.L.1-2005,

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SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) If an agreement has not been reached on the items to be bargained collectively fourteen (14) days before the ~~submission date of a budget by a school employer;~~ **first day of the first term or semester of a school year,** the parties shall continue the status quo, and the school employer may issue tentative individual contracts and prepare its budget on that basis. During this status quo period, in order to allow the successful resolution of the dispute, the school employer may not unilaterally change the terms or conditions of employment that are issues in dispute.

(b) This section may not be construed as relieving the school employer or the school employee organization from the duty to bargain collectively until a mutual agreement has been reached and a contract entered as called for in this chapter.

SECTION 8. IC 20-29-6-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 18. (a) This section applies to an agreement entered into after June 30, 2009.**

(b) Unless the parties to the agreement agree otherwise, the provisions of an agreement entered into after the expiration of an existing agreement apply retroactively from the date the expired agreement expired.

SECTION 9. IC 20-29-8-11, AS ADDED BY P.L.1-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. Mediators and factfinders may not be employed on a full-time or part-time basis by:

- (1) a public school employer that is a school corporation; or
- (2) an organization of:
 - (A) public employees; or
 - (B) public employers; ~~or~~
- (3) affiliates of an organization described in subdivision (2)(A) or (2)(B); **or**
- (4) a firm that represents public employers or public employees in the implementation of this article.**

SECTION 10. IC 20-29-8-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 15. Sections 16 through 30 of this chapter apply to collective bargaining in which either the exclusive representative or the school employer has elected to proceed under sections 16 through 30 of this chapter and has notified the board as provided in IC 20-29-6-12.**

SECTION 11. IC 20-29-8-16 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2009]: **Sec. 16. In addition to the impasse procedures specified in this chapter, a school employer and an exclusive representative may agree in writing to a dispute settlement procedure. A copy of the agreement shall be filed by the parties with the board. If the parties agree to a form of binding arbitration, the arbitrator shall give weight to the factors listed in section 24 of this chapter. The arbitration award is subject to appeal under sections 26 through 29 of this chapter.**

SECTION 12. IC 20-29-8-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2009]: **Sec. 17. If the parties have not reached an agreement at least seventy-five (75) days before the first day of the first term or semester of a school year, the parties shall notify the board that an impasse exists. The board shall initiate mediation and arbitration unless the parties mutually agree to extend the time within which an agreement shall be reached to at least sixty (60) days before the first day of the first term or semester of a school year before the parties notify the board that an impasse exists, at which time the board shall then initiate mediation and arbitration.**

SECTION 13. IC 20-29-8-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2009]: **Sec. 18. Not later than fifteen (15) days after the board receives notice of an impasse under section 17 of this chapter, each party shall submit to the board and to the other party its final offer on each item remaining at impasse that is also an item listed in IC 20-29-6-4. The parties also shall file with the board a joint stipulation with respect to all matters on which the parties have previously agreed, for inclusion in the new or amended collective bargaining agreement. All final offers and joint stipulations filed with the board are open to public inspection.**

SECTION 14. IC 20-29-8-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2009]: **Sec. 19. (a) Not later than three (3) days after the board receives notice of an impasse under section 17 of this chapter, the board shall submit to the parties a list of five (5) competent and experienced mediator-arbitrators, who must be representatives of the interests of the public, but who may not be employees of the board.**

(b) Not later than five (5) days after the parties receive the list of names, the parties shall agree on a name or alternately strike a

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1 name from the list until one (1) name remains. The parties shall
 2 determine by lot who strikes the first name. The parties shall notify
 3 the board of the mediator-arbitrator chosen.

4 (c) If a mediator-arbitrator has not been chosen through
 5 agreement or striking names within the five (5) day limit, the board
 6 shall select a mediator-arbitrator from the list.

7 (d) Upon receipt of notice from the parties or after the board
 8 makes a selection, the board shall formally appoint the
 9 mediator-arbitrator and submit to the mediator-arbitrator the
 10 final offers and joint stipulation of the parties.

11 SECTION 15. IC 20-29-8-20 IS ADDED TO THE INDIANA
 12 CODE AS A NEW SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2009]: **Sec. 20. A mediator-arbitrator shall**
 14 **begin mediation not later than ten (10) days after the**
 15 **mediator-arbitrator is appointed under section 19 of this chapter.**
 16 **The final offers of the parties, as transmitted by the board to the**
 17 **mediator-arbitrator, must serve as the mutual basis for mediation**
 18 **and continued negotiations between the parties with regard to**
 19 **issues in dispute that have not been agreed upon by the parties. All**
 20 **mediation sessions under this section or section 21 of this chapter**
 21 **must be private.**

22 SECTION 16. IC 20-29-8-21 IS ADDED TO THE INDIANA
 23 CODE AS A NEW SECTION TO READ AS FOLLOWS
 24 [EFFECTIVE JULY 1, 2009]: **Sec. 21. (a) For seven (7) successive**
 25 **days after the first mediation session under section 20 of this**
 26 **chapter, the mediator-arbitrator shall mediate the dispute and**
 27 **encourage a voluntary and mutual settlement by the parties.**
 28 **During the first five (5) days of the seven (7) successive day period,**
 29 **either party may unilaterally modify in writing any item in the**
 30 **party's final offer. At the end of the five (5) day period, each party**
 31 **shall certify in writing to the board the changes that have been**
 32 **made in the party's final offer during mediation, with a copy sent**
 33 **to the mediator-arbitrator and to the other party. During the last**
 34 **two (2) days of the seven (7) successive day period, a modification**
 35 **of either party's final offer may be made only with the consent of**
 36 **the other party.**

37 (b) Any modifications made under subsection (a) shall be
 38 certified by the parties to the board, with a copy sent to the
 39 mediator-arbitrator.

40 SECTION 17. IC 20-29-8-22 IS ADDED TO THE INDIANA
 41 CODE AS A NEW SECTION TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2009]: **Sec. 22. (a) If the parties have failed**

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1 to reach a voluntary and mutual settlement during the seven (7)
 2 successive day mediation period under section 21 of this chapter,
 3 the dispute shall be resolved by final offer item by item selections.

4 (b) Not later than five (5) days after the end of the mediation
 5 period and before selecting the final offers, the mediator-arbitrator
 6 shall conduct a public hearing to provide an opportunity to both
 7 parties to present evidence and argument in support of their final
 8 offers.

9 (c) Not later than ten (10) days after the completion of the
 10 hearing, the mediator-arbitrator shall in writing select the final
 11 offer that, in the mediator-arbitrator's judgment, is the more
 12 reasonable and shall in writing state reasons for the selection. The
 13 mediator-arbitrator's selection and the reasons shall be delivered
 14 to the board and to each party. The final offers selected, along with
 15 the stipulation of items already agreed to, become the agreement
 16 between the parties and are final and binding upon the parties,
 17 subject to section 23 and sections 26 through 29 of this chapter.

18 SECTION 18. IC 20-29-8-23 IS ADDED TO THE INDIANA
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS
 20 [EFFECTIVE JULY 1, 2009]: Sec. 23. The parties to a mediation
 21 under section 20 or 21 of this chapter may voluntarily and
 22 mutually agree upon the terms and conditions of a contract at any
 23 time.

24 SECTION 19. IC 20-29-8-24 IS ADDED TO THE INDIANA
 25 CODE AS A NEW SECTION TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 2009]: Sec. 24. In making a decision under
 27 the final offer selection procedures authorized by section 22 of this
 28 chapter, a mediator-arbitrator shall give weight to the following
 29 factors:

30 (1) Past memoranda of agreement and contracts between the
 31 parties.

32 (2) Comparison of wages, hours, terms of employment, and
 33 conditions of employment of the school employees involved
 34 with those of other employees doing comparable work, giving
 35 consideration to factors peculiar to the work involved.

36 (3) Comparison of wages, hours, terms of employment, and
 37 conditions of employment with similar employment in private
 38 business and industry.

39 (4) The average consumer prices for goods and services,
 40 commonly known as the cost of living.

41 (5) The effect on the educational atmosphere or environment.

42 SECTION 20. IC 20-29-8-25 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2009]: **Sec. 25. (a) If an agreement has not been reached on the items to be bargained collectively fourteen (14) days before the first day of the first term or semester of a school year, the parties shall continue the status quo, and the employer may issue tentative individual contracts and prepare a budget based on the individual contracts.**

(b) During the status quo period, to permit the successful resolution of the dispute, the employer may not unilaterally change the terms or conditions of employment that are issues in dispute.

(c) This section does not relieve the school employer or the school employee organization from the duty to follow the procedures set forth in this chapter.

SECTION 21. IC 20-29-8-26 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 26. Not later than fifteen (15) days after the mediator-arbitrator's final offer selection under section 22 of this chapter, either party may petition the circuit or superior court of the county in which the school employer's administrative office is located to set the final offer selection aside. At any time after the fifteen (15) day period, either party may petition the circuit or superior court of the county in which the school employer's administrative office is located to enforce a final offer selection. The court shall hear these matters on an expedited basis and not later than thirty (30) days after the filing of a petition under this section. The court must enforce the final offer selection unless the court finds by a preponderance of the evidence that the decision is:**

- (1) illegal;**
- (2) in excess of the mediator-arbitrator's power; or**
- (3) procured by fraud, bribery, or corruption.**

SECTION 22. IC 20-29-8-27 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 27. If a court sets aside a final offer selection because of illegality or excess of power under section 26 of this chapter, the selection shall be remanded to the same mediator-arbitrator who heard the selection the first time, subject to the right of a party to appeal an adverse ruling of the court. The mediator-arbitrator has the following choices on remand:**

- (1) Affirm the earlier final offer selection minus any items set aside by the court.**
- (2) Make a new determination on the original final offers**

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proposed by the parties after a new hearing or argument, at the discretion of the mediator-arbitrator.

SECTION 23. IC 20-29-8-28 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 28. If a court sets aside a final offer selection because of fraud, bribery, or corruption under section 26 of this chapter, the selection shall be remanded to the board for an expedited hearing before a new mediator-arbitrator, selected in the same manner as the original mediator-arbitrator, subject to the right of a party to appeal an adverse ruling of the court.**

SECTION 24. IC 20-29-8-29 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 29. An appeal under section 27 or 28 of this chapter shall be taken in the manner and to the same extent as orders or judgments are taken in a civil action. Because of the appeal's public importance, the appeal shall be advanced on the docket for the consideration of the court.**

SECTION 25. IC 20-29-8-30 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 30. A party who:**

(1) fails to implement a final offer selection; or

(2) appeals a final offer selection and does not ultimately prevail in court;

under this chapter is liable for reasonable attorney's fees, interest on delayed monetary benefits, and other costs incurred in the action.

SECTION 26. IC 20-29-2-17 IS REPEALED [EFFECTIVE JULY 1, 2009].

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Education, to which was referred House Bill 1076, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 20-29-3-12, AS ADDED BY P.L.1-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. The board shall organize the board's staff to provide for the functions of:

- (1) unit determination;
- (2) unfair labor practice processing;
- (3) conciliation and mediation;
- (4) factfinding;
- (5) mediation and final offer selection; and**
- ~~(5)~~ **(6) research.**

SECTION 2. IC 20-29-3-13, AS ADDED BY P.L.1-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 13. In connection with conciliation and mediation, ~~or factfinding,~~ **or mediation and final offer selection,** the board may:

- (1) use full-time employees; or
- (2) appoint employees for specific cases from a panel the board establishes.

SECTION 3. IC 20-29-6-6, AS ADDED BY P.L.1-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. The obligation to bargain collectively does not include the final approval of a contract concerning any items. Agreements reached through collective bargaining are binding as a contract only if ratified by the governing body of the school corporation and the exclusive representative. The obligation to bargain collectively does not require the school employer or the exclusive representative to agree to a proposal of the other or to make a concession to the other. **The obligation to bargain collectively is subject to the final offer process if mediation and final offer selection is elected under section 12(b) of this chapter.**

SECTION 4. IC 20-29-6-12, AS ADDED BY P.L.1-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 12. **(a)** Collective bargaining between a school ~~corporation employer~~ and the exclusive representative shall begin:

- (1)** not later than one hundred eighty (180) days before the ~~submission date of a budget by a school employer;~~ **first day of**

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the first term or semester of a school year; and

(2) when the exclusive representative notifies the school employer and the board of the start of bargaining.

(b) The school employer and the exclusive representative shall use the collective bargaining procedures set forth in this chapter unless the exclusive representative, at the time an impasse is declared by either party, elects to use the mediation and final offer selection procedure set forth in IC 20-29-8-15 through IC 20-29-8-30.

SECTION 5. IC 20-29-6-14, AS ADDED BY P.L.1-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. If an agreement has not been reached on the items to be bargained collectively seventy-five (75) days before the ~~submission date of a budget by a school employer;~~ **first day of the first term or semester of a school year**, the board shall initiate mediation.

SECTION 6. IC 20-29-6-15, AS ADDED BY P.L.1-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. If an agreement has not been reached on the items to be bargained collectively forty-five (45) days before the ~~submission date of a budget by a school employer;~~ **first day of the first term or semester of a school year**, the board shall initiate factfinding.

SECTION 7. IC 20-29-6-16, AS ADDED BY P.L.1-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) If an agreement has not been reached on the items to be bargained collectively fourteen (14) days before the ~~submission date of a budget by a school employer;~~ **first day of the first term or semester of a school year**, the parties shall continue the status quo, and the school employer may issue tentative individual contracts and prepare its budget on that basis. During this status quo period, in order to allow the successful resolution of the dispute, the school employer may not unilaterally change the terms or conditions of employment that are issues in dispute.

(b) This section may not be construed as relieving the school employer or the school employee organization from the duty to bargain collectively until a mutual agreement has been reached and a contract entered as called for in this chapter."

Page 1, after line 8, begin a new paragraph and insert:

"SECTION 9. IC 20-29-8-11, AS ADDED BY P.L.1-2005, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. Mediators and factfinders may not be employed on a full-time or part-time basis by:

(1) a public school employer that is a school corporation; or

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- (2) an organization of:
 - (A) public employees; or
 - (B) public employers; ~~or~~
- (3) affiliates of an organization described in subdivision (2)(A) or (2)(B); **or**
- (4) a firm that represents public employers or public employees in the implementation of this article.**

SECTION 10. IC 20-29-8-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 15. Sections 16 through 30 of this chapter apply to collective bargaining in which the exclusive representative has elected to proceed under sections 16 through 30 of this chapter and has notified the school employer and the board as provided in IC 20-29-6-12.**

SECTION 11. IC 20-29-8-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 16. In addition to the impasse procedures specified in this chapter, a school employer and an exclusive representative may agree in writing to a dispute settlement procedure. A copy of the agreement shall be filed by the parties with the board. If the parties agree to a form of binding arbitration, the arbitrator shall give weight to the factors listed in section 24 of this chapter. The arbitration award is subject to appeal under sections 26 through 29 of this chapter.**

SECTION 12. IC 20-29-8-17 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 17. If the parties have not reached an agreement at least sixty (60) days before the first day of the first term or semester of a school year, the parties shall notify the board that an impasse exists, and the board shall initiate mediation and arbitration.**

SECTION 13. IC 20-29-8-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 18. Not later than fifteen (15) days after the board receives notice of an impasse under section 17 of this chapter, each party shall submit to the board and to the other party its final offer on each item remaining at impasse that is also an item listed in IC 20-29-6-4. The parties also shall file with the board a joint stipulation with respect to all matters on which the parties have previously agreed, for inclusion in the new or amended collective bargaining agreement. All final offers and joint stipulations filed with the board are open to public inspection.**

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SECTION 14. IC 20-29-8-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 19. (a) Not later than three (3) days after the board receives notice of an impasse under section 17 of this chapter, the board shall submit to the parties a list of five (5) competent and experienced mediator-arbitrators, who must be representatives of the interests of the public, but who may not be employees of the board.**

(b) Not later than five (5) days after the parties receive the list of names, the parties shall agree on a name or alternately strike a name from the list until one (1) name remains. The parties shall determine by lot who strikes the first name. The parties shall notify the board of the mediator-arbitrator chosen.

(c) If a mediator-arbitrator has not been chosen through agreement or striking names within the five (5) day limit, the board shall select a mediator-arbitrator from the list.

(d) Upon receipt of notice from the parties or after the board makes a selection, the board shall formally appoint the mediator-arbitrator and submit to the mediator-arbitrator the final offers and joint stipulation of the parties.

SECTION 15. IC 20-29-8-20 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 20. A mediator-arbitrator shall begin mediation not later than ten (10) days after the mediator-arbitrator is appointed under section 19 of this chapter. The final offers of the parties, as transmitted by the board to the mediator-arbitrator, must serve as the mutual basis for mediation and continued negotiations between the parties with regard to issues in dispute that have not been agreed upon by the parties. All mediation sessions under this section or section 21 of this chapter must be private.**

SECTION 16. IC 20-29-8-21 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 21. (a) For seven (7) successive days after the first mediation session under section 20 of this chapter, the mediator-arbitrator shall mediate the dispute and encourage a voluntary and mutual settlement by the parties. During the first five (5) days of the seven (7) successive day period, either party may unilaterally modify in writing any item in the party's final offer. At the end of the five (5) day period, each party shall certify in writing to the board the changes that have been made in the party's final offer during mediation, with a copy sent**

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to the mediator-arbitrator and to the other party. During the last two (2) days of the seven (7) successive day period, a modification of either party's final offer may be made only with the consent of the other party.

(b) Any modifications made under subsection (a) shall be certified by the parties to the board, with a copy sent to the mediator-arbitrator.

SECTION 17. IC 20-29-8-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 22. (a) If the parties have failed to reach a voluntary and mutual settlement during the seven (7) successive day mediation period under section 21 of this chapter, the dispute shall be resolved by final offer item by item selections.**

(b) Not later than five (5) days after the end of the mediation period and before selecting the final offers, the mediator-arbitrator shall conduct a public hearing to provide an opportunity to both parties to present evidence and argument in support of their final offers.

(c) Not later than ten (10) days after the completion of the hearing, the mediator-arbitrator shall in writing select the final offer that, in the mediator-arbitrator's judgment, is the more reasonable and shall in writing state reasons for the selection. The mediator-arbitrator's selection and the reasons shall be delivered to the board and to each party. The final offers selected, along with the stipulation of items already agreed to, become the agreement between the parties and are final and binding upon the parties, subject to section 23 and sections 26 through 29 of this chapter.

SECTION 18. IC 20-29-8-23 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 23. The parties to a mediation under section 20 or 21 of this chapter may voluntarily and mutually agree upon the terms and conditions of a contract at any time.**

SECTION 19. IC 20-29-8-24 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 24. In making a decision under the final offer selection procedures authorized by section 22 of this chapter, a mediator-arbitrator shall give weight to the following factors:**

- (1) Past memoranda of agreement and contracts between the parties.
- (2) Comparison of wages, hours, terms of employment, and

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conditions of employment of the school employees involved with those of other employees doing comparable work, giving consideration to factors peculiar to the work involved.

(3) Comparison of wages, hours, terms of employment, and conditions of employment with similar employment in private business and industry.

(4) The average consumer prices for goods and services, commonly known as the cost of living.

(5) The effect on the educational atmosphere or environment.

SECTION 20. IC 20-29-8-25 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 25. (a) If an agreement has not been reached on the items to be bargained collectively fourteen (14) days before the first day of the first term or semester of a school year, the parties shall continue the status quo, and the employer may issue tentative individual contracts and prepare a budget based on the individual contracts.

(b) During the status quo period, to permit the successful resolution of the dispute, the employer may not unilaterally change the terms or conditions of employment that are issues in dispute.

(c) This section does not relieve the school employer or the school employee organization from the duty to follow the procedures set forth in this chapter.

SECTION 21. IC 20-29-8-26 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 26. Not later than fifteen (15) days after the mediator-arbitrator's final offer selection under section 22 of this chapter, either party may petition the circuit or superior court of the county in which the school employer's administrative office is located to set the final offer selection aside. At any time after the fifteen (15) day period, either party may petition the circuit or superior court of the county in which the school employer's administrative office is located to enforce a final offer selection. The court shall hear these matters on an expedited basis and not later than thirty (30) days after the filing of a petition under this section. The court must enforce the final offer selection unless the court finds by a preponderance of the evidence that the decision is:

- (1) illegal;
- (2) in excess of the mediator-arbitrator's power; or
- (3) procured by fraud, bribery, or corruption.

SECTION 22. IC 20-29-8-27 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 27. If a court sets aside a final offer selection because of illegality or excess of power under section 26 of this chapter, the selection shall be remanded to the same mediator-arbitrator who heard the selection the first time, subject to the right of a party to appeal an adverse ruling of the court. The mediator-arbitrator has the following choices on remand:**

- (1) Affirm the earlier final offer selection minus any items set aside by the court.**
- (2) Make a new determination on the original final offers proposed by the parties after a new hearing or argument, at the discretion of the mediator-arbitrator.**

SECTION 23. IC 20-29-8-28 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 28. If a court sets aside a final offer selection because of fraud, bribery, or corruption under section 26 of this chapter, the selection shall be remanded to the board for an expedited hearing before a new mediator-arbitrator, selected in the same manner as the original mediator-arbitrator, subject to the right of a party to appeal an adverse ruling of the court.**

SECTION 24. IC 20-29-8-29 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 29. An appeal under section 27 or 28 of this chapter shall be taken in the manner and to the same extent as orders or judgments are taken in a civil action. Because of the appeal's public importance, the appeal shall be advanced on the docket for the consideration of the court.**

SECTION 25. IC 20-29-8-30 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 30. A party who:**

- (1) fails to implement a final offer selection; or**
- (2) appeals a final offer selection and does not ultimately prevail in court;**

under this chapter is liable for reasonable attorney's fees, interest on delayed monetary benefits, and other costs incurred in the action.

SECTION 26. IC 20-29-2-17 IS REPEALED [EFFECTIVE JULY

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1, 2009].".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1076 as introduced.)

PORTER, Chair

Committee Vote: yeas 7, nays 5.

HOUSE MOTION

Mr. Speaker: I move that House Bill 1076 be amended to read as follows:

Page 2, line 24, delete "the exclusive representative, at the time an impasse is".

Page 2, line 25, delete "declared by either party," and insert **"either party declares an impasse and"**.

Page 2, between lines 27 and 28, begin a new paragraph and insert:

"(c) The exclusive representative or the school employer may opt out of participating in the mediation and final offer selection procedure at the start of bargaining."

Page 3, line 36, after "which" insert **"either"**.

Page 3, line 37, after "representative" insert **"or the school employer"**.

Page 3, line 38, delete "the school employer and".

Page 4, line 11, delete "sixty (60)" and insert **"seventy-five (75)"**.

Page 4, line 13, delete "exists, and the" and insert **"exists. The"**.

Page 4, line 14, delete "arbitration." and insert **"arbitration unless the parties mutually agree to extend the time within which an agreement shall be reached to at least sixty (60) days before the first day of the first term or semester of a school year before the parties notify the board that an impasse exists, at which time the board shall then initiate mediation and arbitration."**

(Reference is to HB 1076 as printed February 3, 2009.)

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